**PUBLIC PROSECUTOR**

**v.**

**KUM CHEE CHEONG**

HIGH COURT, SINGAPORE
KS RAJAH JC
[MAGISTRATE'S APPEAL NO. 437/90/01]
15 NOVEMBER 1991

***EVIDENCE:*** *Appeal - Magistrate erred in law and in fact - In finding the burden of proving the non-existence of a policy of insurance rests on the prosecution - Or whether burden of proof lay on prosecution or defence - Onus - Section 108 of Evidence Act.*

This is an appeal by the PP against the decision of the learned Magistrate acquitting the respondent on the second charge after he had called for the defence.

The second charge was that the defendant did use a motor vehicle, whilst there was not in force a policy of insurance in respect of third party risks under the motor vehicles (Third Party Risks & Compensation) Act.

The appeal is on the ground that the learned Magistrate erred in law and in fact in finding that the burden of proving the non-existence of a policy of insurance rests on the prosecution when in fact the burden of proof lay not with the prosecution but with the respondent under s. 108 of the Evidence Act.

**Held:**

**[1]** The prosecution had not made out a *prima facie* case because the prosecution did not require the respondent to produce his certificate which he thereafter failed to do proof of driving is not enough to shift the burden of proof. The driver must be asked to produce his certificate as required under s. 16 of motor vehicles ( Third - Party Risks and Compensation) Act (Cap 189). Section 108 of the Evidence Act is not intended to relieve the prosecution of its duty to require the respondent to produce his certificate.

**[2]** The failure of the prosecution to produce the evidence of facts especially within the knowledge of its officials which rested upon it under s. 108 of the Evidence Act taken together with the failure to require the production of the insurance certificate resulted in the failure to establish a *prima facie* case.

*[Appeal is dismissed.]*

**Cases referred to:**
*Rex v. Oliver [1944] KB 68 (cit)*
*John v. Humphreys [1955] 1 WLR 325* ***(dist)***
*PP v. Koh Chin Mong [1962] 28 MLJ 104* ***(cit)***
*PP v. Chin Yoke [1940] 9 MLJ 47* ***(cit)***
*Khoo Teck Yam v. PP [1955] 21 MLJ 112* ***(cit)***
*Garda Michael Mc Gowan v. Arthur Carville [1960] IR 330* ***(cit)***
*Buchanan v. Moore [1963] NI 194* ***(cit)***
*Regina v. Edwards [1975] 1 QB 27* ***(cons)***
*Shambhu Nath Mehra v. The State of Ajmer AIR [1956] SC 404* ***(cons)***
*Re Tan Kheng Cheng [1962] 28 MLJ 310* ***(cit)***

**Legislation referred to:**
Evidence Act (Cap 97) [Sing], s. 108
Evidence Act [Ind], ss. 106, 101

Evidence Enactment (Cap 10) [Sing], s. 106
Evidence Ordinance [Sing], s. 74
Penal Code [Ind], s. 420
Motor Vehicles (Third-Party Risks and Compensation) Rules 1960 [Sing], r. 6
Motor Vehicles (Third Party Risks Compensation) Act (Cap 189) [Sing], ss. 3(1), (2), 16(1), (3), (4)
Licensing Act 1964 [UK], ss. 34(2), 160(1)(a)
Road Traffic Act (Cap 276) [Sing], s. 15(a)
Road Traffic (Third-party Insurance) Rules 1946 [Sing], rr. 10, 11(4)
Road Traffic Act 1933 [Ireland], s. 22(1)
Road Traffic Act 1955 [Northern Ireland], s. 61(3)

*For the appellant - Yang Ing Loong*
*For the respondent - Richard Ang*

**JUDGMENT**

**KS Rajah JC:**

This is an appeal by the PP against the decision of the learned Magistrate acquitting the respondent on the second charge after he had called for the defence.

The respondent was charged as follows:

> 1st Charge
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> You,
>
> Kum Chee Cheong (SNRIC 1676842/A)
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> are charged that you, on 11 April 1987, at about 10.50 a.m. at Thomson Road, did use motor car No. QEJ 7371 X for which a vehicle licence was not in force (declared as non-user from 28 February 1987 to 31 January 1988) and you have thereby committed an offence under s. 15 and punishable under s. 15(a) of the Road Traffic Act, Cap.276.
>
> 2nd Charge
>
> You,
>
> Kum Chee Cheong (SNRIC 1676842/A)
>
> are charged that you, on 11 April 1987, at about 10.50 a.m. at Thomson Road, did use motor car No. QEJ 7371 X whilst there was not in force in relation to the use of the said vehicle such a policy of insurance in respect of the third party risks as complies with the requirements of the Motor Vehicles (Third Party Risks & Compensation) Act, Cap.189, and you have thereby committed an offence under s. 3(1) and punishable under s. 3(2) of the aforesaid Act.

The respondent pleaded guilty to the first charge. He was convicted and sentenced to pay a fine of $500 on the first charge. The respondent claimed trial on the second charge.

At the end of the trial, the learned Magistrate found that the essential ingredients of the second charge had not been proved at the close of the prosecution's case. Saying he should not have called for the defence, he acquitted and discharged the respondent on the second charge. The PP is appealing against the order of acquittal.

***The Prosecution's Case***

The prosecution's case was that on 11 April 1987, Toh Sew Lan, W/Cpl 3919, attached to the Registry of Vehicles, checked motor car QEJ 7371X which was then being driven by the respondent. She found an expired road tax disc being displayed. She booked him for the offence of not displaying "a valid road tax disc". She did not give evidence saying that she requested the respondent to produce his certificate of insurance. She filed her report for the offence of "Non Display of Valid Road Tax Disc".

The investigator, Nagir Ahmad, with the Registry of Vehicles testified that the vehicle had been declared by its previous registered owner to be a non-user for the period 28 February 1987 to 31 January 1988. M/s. Seng Lee Impex Pte. Ltd. were the registered owner of QEJ 7371 X from 30 March 1987. On being given the report, the investigator assumed that because the vehicle had been declared a non-user, there was no valid insurance policy. The investigator sent 2 letters to the respondent. On 6 May 1987, he sent a letter to the respondent's address at Joan Road asking the respondent to see him in connection with the report. The report refers to road tax. On 25 May 1987, a further letter was sent to the same address. The respondent was again asked to see the investigator over his failure to display a valid vehicle licence. The letters do not make any request for a certificate of insurance or refer to an insurance policy. The respondent did not respond to the letters. The investigator admitted that he would not be aware if a cover note had been issued for the car.

It was part of the prosecution's case that a cheque was paid to the Registry of Vehicles on 11 April 1987 to renew the road tax. The reverse side of the cheque carries the number of the motor vehicle QEJ 7371 X and the rubber stamp of the Registry of Vehicles. When the cheque was dishonoured, cash was paid. A certificate of insurance must have been produced under the Road Traffic (Third-Party Insurance) Rules 1946. This inference was not drawn by the learned Magistrate but it is open to this Court to do so. Whether a certificate of insurance was produced to the Registrar under r. 10 of the Road Traffic (Third-Party Insurance) Rules 1946 when the application was made to renew the road tax was a fact "especially" within the knowledge of the Registrar.

***Respondent's Case***

The respondent's case was that he was a marketing executive. In April 1987 he was employed by Accent Properties Pte. Ltd. and had his own car. Seng Lee Impex Pte. Ltd., which was managed by his brother, was the owner of QEJ 7371 X. To satisfy the requirements of the Companies Act, his name was used, but he did not concern himself with the affairs of the company. On 11 April 1987, he was driving QEJ 7371 X on an errand for his brother. That was the first time he was driving the car and did not know whether it had a valid road tax disc or a valid policy of insurance. He did not receive the letters sent by the investigator. He had sold his house to which the two letters had been sent in June 1987.

The respondent had told his brother about the invalid road tax disc. As far as he was aware, the road tax was paid and the car was subsequently sold. If the road tax was paid, he thought the insurance must also have been paid. In cross-examination he was asked:

Q: Can you show that the car was covered?

A: Yes, but I need the time.

Q: (Put) That there was no insurance coverage?

A: Yes, I believe there was insurance coverage. We had the cover note.

It may well be that a cover note was obtained on 11 April 1987 after the respondent had told his brother about the invalid licence. On the other hand, a cover note may already have been in existence and the application for the vehicle licence made on the afternoon when the failure to renew the road tax was discovered.

At the end of the trial, the learned Magistrate found that the prosecution had not adduced any evidence to establish the ingredients of the charge against the respondent. With commendable courage, he has admitted in his grounds of decision that "On hindsight, I should not have called for the defence." He then acquitted and discharged the respondent.

***The Appeal***

The appeal is on the ground that the learned Magistrate erred in law and in fact in finding that the burden of proving the non-existence of a policy of insurance rests on the prosecution when in fact the burden of proof lay not with the prosecution but with the respondent, as s. 108 of the Evidence Act provides that:

> When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

The other grounds were not seriously pursued by the prosecution, although the finding of the learned Magistrate that an ingredient of the charge had not been established was also challenged.

Two questions have to be decided:

(a) whether the prosecution had made out a *prima facie* case; and

(b) whether mere proof of driving (that not being an unlawful act) is enough for the prosecution to rely on s. 108 of the Evidence Act.

The Appellant relied on the English cases of *Rex v. Oliver* [1944] KB 68 and *John v. Humphreys* [1955] 1 WLR 325, and the case of *PP v. Koh Chin Mong* [1962] 28 MLJ 104 where Adams J took the Magistrate and Counsel to task and said:

> I was under the impression that this matter had been settled once and for all by the case of *PP v. Chin Yoke* [l940] MLJ 47 which was followed in *Khoo Teck Yam v. PP* [1955] MLJ 112. If any more support were needed for the proposition that in a prosecution for an offence of doing something for which a licence is required under the Road Traffic Ordinance, it is unnecessary to call a licensing officer to prove the non-issue of the licence and that the burden is on the accused to negative the averment of being unlicensed by producing in this case (a) the vehicle licence, and (b) the certificate of insurance, there are the two further cases of *Rex v. Oliver* and *John v. Humphreys*. All the above cases apply in practice the proposition of law laid down by s. 106 of the Evidence Ordinance of which both the learned Magistrate and Mr. Paramjothy must be well aware.

It is useful to examine the cases cited by Adams J. In *PP v. Chin Yoke* [l940] 9 MLJ 47, the prosecution had, *inter alia*, adduced evidence:

(a) that the respondent was driving a motor cycle;

(b) that the respondent failed to produce his licence when called upon to do so;

(c) that the motor cycle was driven by the respondent without the consent of the owner after the owner had left his motor cycle outside his house.

The question arose whether there was a necessity to call a licensing officer to prove the non-issue of a licence was considered in the above matrix of facts. The Court construing s. 106 of the Evidence Enactment, Cap 10:

> When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

said:

> This section and others of a similar nature codify what is and has been for years the English law in this respect ... The burden is, of course, on the accused to negative the averment of being unlicensed, by producing his licence.

It is important to note that the prosecution had made out a *prima facie* case to shift the onus of proof.

In *Khoo Teck Yam v. PP* [1955] 21 MLJ 112, there was a third-party insurance policy but the policy did not cover the carriage of goods in connection with any trade or business. The prosecution had adduced *prima facie* evidence that the policy did not cover the use of vehicles. We are therefore left with the English cases.

On much the same kind of facts as in *John v. Humphreys* [1955] 1 WLR 325 on which the appellant relied, the problem was considered by both the High Court and the Supreme Court in Eire. Both Courts ruled to the contrary in *John v. Humphreys.* In the case of *Garda Michael McGowan,* complainant and appellant, *v. Arthur Carville,* defendant and respondent [1960] IR 330, the defendant was the driver of a motor van when he was stopped and requested to produce his driving licence which he failed to do so then but stated that he would do so later. The defendant was charged with driving the vehicle without having a driving licence, contrary to s. 22(1) of the Road Traffic Act 1933 of Ireland. He did not answer the charge nor was he represented and the complaint was heard in his absence. No evidence was given as to whether or not he had produced his driving licence at the station as he had earlier promised to do. The District Justice dismissed the complaint, being of opinion that the onus was on the complainant to prove that the defendant had no driving licence, and that he had failed to discharge the onus. The case was stated for the opinion of the High Court as to whether he was correct in law in dismissing the charge. The High Court held that the District Justice was correct in law in dismissing the summons.

The Court said that in *John v. Humphreys,* Ormerod J who had expressed some hesitation, considered himself bound by *Rex v. Oliver.* The Irish Court said that it was not bound by *Rex v. Oliver* and pointed out that *John v. Humphreys* had "some unusual features". In a letter to the justices purporting to be written by the defendant, the defendant in *John v. Humphreys* admitted that he had no licence.

The Chief Justice, at p. 343, said:

> Proof of the fact that a person does not possess a valid driving licence may not, of course, be a simple matter. ... On the other hand, acceptance of the peculiar knowledge' principle, even in the modified and restricted form suggested by Mr. McCarthy, would have curious consequences. If he is correct, every person who drives a mechanically propelled vehicle on a public road is, *prima facie,* committing an offence. There is no need to stop him and ask for his licence. Provided that he is seen and recognised, or can otherwise be identified, he can be prosecuted and made to establish his innocence by proof that he had at the material time a valid driving licence. It is no real or satisfactory answer to say that this would not be done except in a proper case. That is quite possibly true; but true or not I am not in favour of unnecessarily adopting any principle which could turn out to be a dangerous weapon in the wrong hands. If dangerous weapons are left available for use they are apt to fall into the wrong hands.

The Court held that in the absence of evidence that the defendant had failed to produce his licence, the proper view for the District Justice to have taken was that the onus of proof had not shifted, that it still rested on the complainant and had not been discharged.

In *Buchanan v. Moore* [1963] NI 194, the accused was charged with using a motor vehicle without insurance contrary to the statutory provisions of the Road Traffic Act (Northern Ireland) 1955. He was further charged with failing to produce a certificate of insurance as required by s. 61(3) of the Act. Both summonses were heard together.

Evidence was given by a constable that he saw a motor car parked at the side of the road. There was no one in the car and there was no tax disc displayed. Five minutes later, the constable spoke to the defendant who admitted that the car belonged to him and that it had not been taxed. When asked for his driver's license and certificate of insurance, he said that

he had not got them on him but that he would produce them at the police station within 5 days. He told the constable that he was selling the car that day and that it was insured. The defendant failed to produce the licence or the certificate when subsequently interviewed.

The prosecution submitted that it was a case where the negative averment that the defendant was not insured was sufficient to put on him the onus of proving that he was covered by insurance as this was a matter peculiarly within his own knowledge. The Magistrate declined to accept the submission and dismissed the charge of using a motor vehicle without a policy of insurance. On the charge of failing to produce the certificate of insurance he fined the defendant $10. The case was stated for the opinion of the Court of Appeal as to whether he was correct in holding that the prosecution must prove the absence of insurance cover.

Lord MacDermott LCJ stated the law in the following terms:

> It appears to me to be a well established rule that where one of the elements of a criminal charge consists of an averment of a negative nature, and where the averment relates to a fact which is peculiarly within the knowledge of the defendant, then the burden of disproving that averment falls upon the defendant.
>
> On the authorities it would seem that the burden may either rest upon the defendant *ab initio*, or may shift to him after the prosecution has proved a *prima facie* case. The decision in *John v. Humphreys*, which related to a driving licence, seems to indicate that in such case the rule would apply, as it were, *ab initio.*
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> The other view is that the prosecution has to do something to establish a *prima facie* case before the rule can be applied. For my own part, I have considerable sympathy with the doubts expressed by Ormerod J in *John v. Humphreys*, and it may be that in some cases this other view is the right view.

The prosecution had proved that the respondent, when asked to produce, not only failed to produce the certificate at the time when he was stopped by the police or within the next 5 days, but also that when he was seen on 2 occasions after the expiry of the 5 days he made excuses and still failed to produce the document. The police gave him every opportunity of bringing in the certificate and indeed exercised a considerable degree of patience. His Lordship therefore said:

> In this case, however, I do not think it necessary to come to a definite conclusion as to which view should prevail on the facts here, for I find in the case stated that the prosecution clearly proved a sufficient *prima facie* case to shift the burden to the respondent ...

Lord MacDermott LCJ was doubtful about the validity of the prosecution's submission that with charges of this kind, there was no need to establish a *prima facie* case. The Court did not rule on this point because the prosecution had proved a *prima facie* case, but it is clear the Court regarded the "other view" where the prosecution has to establish a *prima facie* case as the "right view".

The Irish cases and the English decisions in *Rex v. Oliver* and *John v. Humphreys* were considered by the English Court of Appeal in the case of *Regina v. Edwards* [l975] 1 QB 27 where the defendant was convicted of selling intoxicating liquor without a justices' licence contrary to s. 160(1)(a) of the Licensing Act 1964. On his appeal against conviction on the ground that, since the prosecution had access to the register of licences under s. 34(2) of the Act, the prosecution should have called evidence to prove that there was no justices' licence in force, the Court, dismissing the appeal, held that there was an exception to the fundamental rule of the criminal law that the prosecution had to prove every element of the offence charged, which was limited to offences arising under enactments which prohibited the doing of an act but subject to provisos or exemptions; and that its application was not

dependent upon either the fact, or the presumption, that the defendant had peculiar knowledge enabling him to prove the positive of a negative averment. The Court said:

> Whenever the prosecution seeks to rely on this exception, the Court must construe the enactment under which the charge is laid. If the true construction is that the enactment prohibits the doing of acts, subject to provisos, exemptions and the like, then the prosecution can rely upon the exception ...
>
> Two consequences follow from the view we have taken as to the evolution and nature of this exception. First, as it comes into operation upon an enactment being construed in particular way, there is no need for the prosecution to prove a *prima facie* case of lack of excuse, qualification or the like; and secondly, what shifts is the onus: it is for the defendant to prove that he was entitled to do the prohibited act. What rests on him is the legal or, as it is sometimes called, the persuasive burden of proof. It is not the evidential burden.

Section 108 of the Evidence Act (Cap 97), however, cannot be properly construed by relying on the decision in *R v. Edwards* alone.

The Supreme Court of India considered s. 106 (our s. 108) and s. 101 (our s. 103) of the Evidence Act in the case of *Shambhu Nath Mehra v. The State of Ajmer AIR* [1956] SC 404. The appellant had been convicted of offences under s. 420 of the Indian Penal Code. The substance of the offences for which he was convicted lay in obtaining various sums of money from the Government for 2 journeys by train. The money represented the second class railway fares for the journeys. The allegation against him was that either he did not travel at all between those places on the relevant dates, or, if he did, that he did not pay the fare.

The only question was whether he paid the second class fares which he later claimed and obtained from the Government. The only proof that was adduced was that no second class tickets were issued at the Ajmer Railway Station on the relevant dates. This was proved by the booking clerk but the witness also testified that tickets are not always issued and that passengers can pay the fare on the train, and that if the second class is fully booked, no further tickets are issued.

The railway registers and books would have shown whether or not any such payments were made on those dates and the State could have proved the absence of such payments as easily as it was able to prove, from the same sort of material, that no second class tickets were issued. Instead of doing that, the State contented itself by saying that no second class tickets were issued and relied on illustration (b) to s. 106, Evidence Act, contending that the burden of proving that the accused did pay the second class fares was on him.

The Court said:

> Section 106 is an exception to s. 101. Section 101 lays down the general rule that in a criminal case the burden of proof is on the prosecution and s. 106 is certainly not intended to relieve it of that duty.
>
> On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience.
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> The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to a very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not.

The appellant's case was that 2 l/2 years after the alleged offence:

> It is humanly impossible to give accurate explanations for the journeys in question after such a lapse of time.

The Court looked at the prosecution's position:

> And what of the prosecution? They have their registers and books, both of the railway and of the department in which the appellant works. They are in a position to know and prove his official movements on the relevant dates. They are in a position to show that no vouchers or receipts were issued for a second class journey by the guard or conductor of the trains on those days.
>
> This information was as much within their 'especial' knowledge as in that of the appellant; indeed it is difficult to see how, with all the relevant books and other material in the possession of the authorities, these facts can be said to be within the 'especial' knowledge of the appellant after such a lapse of time however much it may once have been there.

***Duty to Ask***

Section 16 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189) reads:

> 16 - (1) Any person driving a motor vehicle on a road shall on being so required by a police officer give his name and address and the name and address of the owner of the motor vehicle and produce his certificate and if he fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $500 and in the case of a second or subsequent offence to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months:
>
> Provided that if the driver of a motor vehicle within 5 days after the date on which the production of his certificate was so required produces the certificate in person at such police office or police station in Singapore as may have been specified by the driver at the time its production was required he shall not be convicted of an offence under this subsection by reason only of failure to produce his certificate to the police officer.
>
> (2) ...
>
> Provided that a person shall not be ...
>
> (3) It shall be the duty of the owner of a motor vehicle to give such information as he may be required by or on behalf of the Deputy Commissioner of Police to give for the purpose of determining whether the motor vehicle was or was not being driven in contravention of s. 3 on any occasion when the driver was required under this section to produce his certificate and if the owner fails to do so he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $500 and in the case of a second or subsequent offence to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months.
>
> (4) In this section, "produce his certificate" means produce for examination the relevant certificate of insurance or certificate of security or such other evidence that the motor vehicle is not or was not being driven in contravention of s. 3 as may be prescribed.

The section requires a police officer to require any person driving a motor vehicle on a road to "produce his certificate" for examination or such other evidence that the motor vehicle is not or was not being driven in contravention of s. 3 of the Act. Time is given to produce his certificate. The respondent or the owners of the vehicle were not asked to "produce the certificate" at any time. When the respondent was asked to do so in Court for the first time, he wanted time. Time was not given.

Rule 10 of the Road Traffic (Third-Party Insurance) Rules 1946 requires any person applying for the registration of a motor vehicle to produce to the Registrar a certificate of insurance indicating that on the date when the payment of tax is made there will be in force a policy

in relation to the user of the motor vehicle by the applicant. Rule 11(4) of the same Rules further provides for the furnishing to the Registrar or to any Chief Police Officer particulars of records the company issuing policies must keep.

Rule 6 of the Motor Vehicles (Third-Party Risks and Compensation) Rules 1960 provides for the evidence that a motor vehicle is not being used in contravention of s. 3 of the Act to be produced by the owner or driver of such vehicle on the request of a police officer as an alternative to a certificate of insurance.

Adams J who took the Magistrate to task in *PP v. Koh Chin Mong* [1962] 28 MLJ 104 advised Magistrates on the need to make out a *prima facie* case in *Re Tan Kheng Cheng* [1962] 28 MLJ 310. It was a case of driving a vehicle without there being in force a valid certificate of insurance contrary to s. 74 of the same Ordinance. Adams J said:

> Although the fact that the vehicle is insured is in the knowledge of the defendant or his employer and therefore s. 106 of the Evidence Ordinance applies and, once a *prima facie* case has been made out, it is for the defence to show that he was properly insured, the prosecution must make out a case which, if unrebutted would entitle the Court to convict before it can call on the defence. *The police must adduce evidence to say that they asked the defendant for his certificate of insurance and that he was unable to produce it or that having asked him for it and inspected it, they found that it did not cover the use for which the vehicle was being put at the time that it was stopped. This, I may say, is most important. I strongly advise Magistrates to ask to see both the certificate of insurance and the policy if they do call on the defence. They may very well find that the policy in fact covers the use of the vehicle.*
>
> There was not, therefore, at the end of the case for the prosecution any evidence at all upon which the Magistrate could find that a case which if unrebutted would have entitled him to convict the defendant on the second charge, and he should not have called upon the defence.
>
> (Emphasis is mine)
>
> The prosecution had not made out a *prima facie* case because the prosecution did not require the respondent to produce his certificate which he thereafter failed to do. Mere proof of driving is not enough to shift the burden of proof. The driver must be asked to produce his certificate as required under s. 16 of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189). Section 108 of the Evidence Act is not intended to relieve the prosecution of its duty to require the respondent to produce his certificate.

The failure of the prosecution to produce the evidence of facts especially within the knowledge of its officials which rested upon it under s. 108 of the Evidence Act taken together with the failure to require the production of the insurance certificate resulted in a failure to establish a *prima facie* case.

The decision of the learned Magistrate on hindsight was more than an act of judicial valour. He put right a wrong that he did when he called upon the respondent to enter his defence.

The appeal is dismissed.

Also found at [1992] 1 CLJ 593